

## **REMARKS**

Claims 1-28 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-26 of U.S. Patent No. 6,093,455 to Kamen *et al.* To expedite the early allowance of the subject application and without acquiescing in the rejections, applicants submit herewith a Terminal Disclaimer to remove this rejection.

### **Provisional Obviousness-Type Double Patenting Rejections**

Claims 27 and 2 of the present application have been rejected under the judicially-created doctrine of obviousness-type double patenting in view of claims 1 and 21 of U.S. Patent No. 6,093,455 ("the '455 patent").

Claims 1-26 of the present application have also been rejected under the doctrine of obviousness-type double patenting in view of claims 1-26 of the '455 patent.

In both rejections, the Examiner alleges that although the conflicting claims are not identical, they are not patentably distinct.

In response, while not arguing with the rejections, Applicant submits herewith a Terminal Disclaimer under 37 C.F.R. § 1.321(b) by the assignee of the above-identified application (1) disclaiming any part of any patent granted on the present application (U.S. Patent Application No. 10/002,220; "the '220 application") which could extend beyond the expiration date of the '455 patent; and (2) ensuring that any such patent granted on the '220 application shall be enforceable only for and during such period that such patent is commonly owned with the '455 patent.

By this terminal disclaimer, and as stated therein, the assignee does not disclaim any terminal part of any patent granted on the '220 application prior to the expiration date of the full statutory term of the '455 patent, as presently shortened by any terminal disclaimer, in the event that the '455 patent later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321, has all claims canceled by a reexamination certificate, or is otherwise terminated prior to the expiration of its statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above. Applicant submits that the submission of the Terminal Disclaimer obviates the rejection, and respectfully requests its withdrawal.

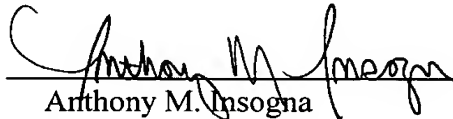
**CONCLUSION**

Applicants believe that the present claims meet all of the requirements for patentability. Entry of the submitted Terminal Disclaimer Under and early allowance of the present claims are earnestly requested.

If any issues remain, the Examiner is requested to telephone the undersigned.

Respectfully submitted,

Date October 18, 2002

  
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